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McAmis v. State Appellant's Brief Dckt. 40417

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IN THE SUPREME COURT OF THE STATE OF IDAHO

GREGORY MCAMIS,)
)
 Plaintiff-Appellant,)
)
 v.)
)
 STATE OF IDAHO,)
)
 Respondent.)
 _____)

NO. 40417

Adams Co. CV-2010-2655

APPELLANT'S BRIEF

**APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADAMS**

HONORABLE BRADLEY S. FORD
District Judge

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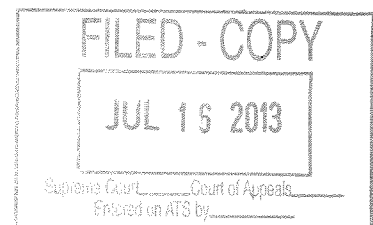


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STATEMENT OF THE CASE

Nature of the Case

Petitioner appeals from an order granting post conviction relief based on the prosecution's breach of a plea agreement. Petitioner asserts that the district court erred when it ordered as that he be resentenced as a remedy rather than allowing him to withdraw his guilty plea.

Statement of the Facts and Course of Proceedings

This appeal presents a very narrow issue and so only a limited explanation of prior proceedings is necessary. As explained in the Order Granting Post-Conviction Relief (hereinafter Order), Petitioner was charged with Grand Theft by Deception and Persistent Violator. (R. p. 53.) He pled to one count of Grand Theft and the Persistent Violator charge was dismissed. (R. p. 53.) He was sentenced by the original district judge to 11 years with the first 5 years fixed to run concurrent with a pending Canyon County case. (R. p. 53.)

After a failed direct appeal, Petitioner timely filed the instant petition for post conviction relief claiming ineffective assistance of counsel because his attorney failed to object to the state's breach of plea agreement at sentencing when it failed to recommend the sentence it promised. (R. p. 54-55.)

The district court ultimately found in Petitioner's favor, holding that the prosecutor breached the plea agreement and that counsel was ineffective for failing to object. (R. p. 63.) However, the district court ordered a resentencing as a remedy, rather than allowing Petitioner to withdraw his guilty plea. (R. p. 65.)

Appellant timely appeals. (R. p. 73.)

ISSUE

Whether the district court erred when it ordered a resentencing as a remedy for the prosecutor's breach of plea agreement instead of withdrawal of the guilty plea.

ARGUMENT

THE DISTRICT COURT ERRED WHEN IT ORDERED A RESENTENCING AS A REMEDY FOR THE PROSECUTOR'S BREACH OF PLEA AGREEMENT INSTEAD OF WITHDRAWAL OF THE GUILTY PLEA

A. The State's Breach Of The Plea Agreement In This Case

Since the court did find a breach of the plea agreement, the breach itself will be only briefly explained. The relevant terms of the plea agreement were that Mr. McAmis would plead guilty to one count of Grand Theft and the state would dismiss the persistent violator enhancement. (R. p. 58.) Further, the plea agreement required that the state recommend a sentence of 5 years with the first 2 years fixed and that the sentence be suspended. (R. p. 59.) Instead, at sentencing, the prosecutor recommended that the judge imposed incarceration consistent with the recommendations in the PSI. (R. p. 59) Defense counsel, rather than objecting to the state's failure to honor its promise, instead stated that he "apparently misunderstood the nature of the plea discussions with the State." (R. p. 60.)

The criminal court, after stating that it considered, inter alia, the presentation of the prosecutor, imposed a sentence of 11 years with the first five years fixed which was not suspended. (R. p. 60.)

The post conviction court (a different district judge) found after an evidentiary hearing that there was a plea agreement, the prosecution made a recommendation inconsistent with its promise, and that defense counsel failed to object. (R. p. 62-63.) The post conviction court continued by stating while it

cannot determine that it would have been probable that an objection by defense counsel would have altered the original judge's sentencing decision, there is a district possibility that had the prosecution made recommendations consistent with the plea agreement and/or defense objected, that Mr. McAmis would have received a more favorable sentence. (R. p. 63.) Further, the court stated that had defense counsel objected, Mr. McAmis may have been given the opportunity to withdraw his guilty plea in order to protect his negotiated rights. (R. p. 63.)

First, this court did not originally sentence McAmis so it cannot determine without speculating whether there is a reasonable probability that the sentencing outcome would have been different if his attorney would have effectively compelled the prosecuting attorney to make sentencing recommendations consistent with the plea agreement. However, McAmis was clearly prejudiced by the breach and this denial of a constitutionally protected right should entitle him to a new sentencing hearing where he receives specific performance of the promised recommendation.

Order, p. 12-13. (R. p. 63-64.)

Later, the district court concluded:

This court finds no basis to set aside the Defendant's guilty plea in this case. The guilty plea was validly entered. The appropriate remedy in this case is to provide McAmis specific performance of the prosecuting attorney's plea bargained sentencing recommendations during a resentencing hearing.

Order, p. 14. (R. p. 65.)

B. The Law Regarding Breached Plea Agreements

The law regarding the two possible remedies for the prosecution's breach of a plea agreement is well established and has been stated in many Idaho

cases, an example being *State v. Jones*, 139 Idaho 299, 77 P.3d 988 (Ct.App. 2003):

It is well established that “when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.” *Santobello v. New York*, 404 U.S. 257, 262, 92 S.Ct. 495, 499, 30 L.Ed.2d 427, 433 (1971). This principle is derived from the Due Process Clause and the fundamental rule that, to be valid, a guilty plea must be both voluntary and intelligent. *Mabry v. Johnson*, 467 U.S. 504, 508-09, 104 S.Ct. 2543, 2546-47, 81 L.Ed.2d 437, 442-43 (1984); If the prosecution has breached its promise given in a plea agreement, whether that breach was intentional or inadvertent, it cannot be said that the defendant's plea was knowing and voluntary, for the defendant has been led to plead guilty on a false premise. In such event, the defendant will be entitled to relief. *Santobello*, 404 U.S. at 262, 92 S.Ct. at 499, 30 L.Ed.2d at 433; *Mabry*, 467 U.S. at 508-09, 104 S.Ct. at 2546-47, 81 L.Ed.2d at 442-43; As a remedy, the court may order specific performance of the agreement or may permit the defendant to withdraw the guilty plea. *Santobello*, 404 U.S. at 263, 92 S.Ct. at 499, 30 L.Ed.2d at 433;

Id., p. 301-302 (emphasis added, internal citations omitted).

In *State v. Acuna*, 294 P.3d 1151, 1154 (Idaho Ct.App. 2013), the Idaho Court of Appeals reversed the trial court's decision that there was no breach of a plea agreement and remanded for the trial court to determine whether the appropriate remedy was specific performance or to give the defendant the option of withdrawing her guilty plea.

Appellant is unaware of any Idaho case law concerning our specific issue of which remedy is appropriate, to wit, withdrawal of guilty plea or specific performance, but it seems safe to assume that it is a matter of discretion of the district court. Accordingly, the standard of review for abuse of discretion would apply.

The well established standard of review for an abuse of discretion is as explained in *Straub v. Smith*, 145 Idaho 65 (2007):

Abuse of discretion is determined by a three part test which asks whether the district court "(1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) reached its decision by an exercise of reason."

Id. p. 71 (internal citations omitted).¹

C. The Court Erred in Not Allowing Mr. McAmis to Withdraw His Guilty Plea

The court's only reason for holding that it would not allow Mr. McAmis to withdraw his guilty plea was that it was validly entered. But as explained below by the United States Supreme Court, the fact that the plea was valid is the very reason that a defendant is entitled to a remedy (which can include rescission).

In *Puckett v. United States*, 556 U.S. 129 (2009), which concerned the proper federal standard of review for a breach of plea agreement where there was no objection, the United States Supreme Court explained:

First, there is nothing to support the proposition that the Government's breach of a plea agreement retroactively causes the defendant's agreement to have been unknowing or involuntary. Any more than there is anything to support the proposition that a mere breach of contract retroactively causes the other party's promise to have been coerced or induced by fraud. Although the analogy may not hold in all respects, plea bargains are essentially contracts. See *Mabry v. Johnson*, 467 U.S. 504, 508, 104 S. Ct. 2543, 81 L. Ed. 2d 437 (1984). When the consideration for a contract fails--that is, when one of the exchanged promises is not kept--we do not say that the voluntary bilateral consent to the contract never existed, so that it is automatically and utterly void; we say that the contract was broken. See 23 R. Lord, *Williston on Contracts* § 63.1 (4th ed.

¹ While that case happened to concern a motion for reconsideration, the standard would be the same for our issue.

2002) (hereinafter Williston). The party injured by the breach will generally be entitled to some remedy, which might include the right to rescind the contract entirely, see 26 *id.*, § 68.1 (4th ed. 2003); but that is not the same thing as saying the contract was never validly concluded.

So too here. When a defendant agrees to a plea bargain, the Government takes on certain obligations. If those obligations are not met, the defendant is entitled to seek a remedy, which might in some cases be rescission of the agreement, allowing him to take back the consideration he has furnished, i.e., to withdraw his plea. But rescission is not the only possible remedy; in *Santobello* we allowed for a resentencing at which the Government would fully comply with the agreement--in effect, specific performance of the contract. 404 U.S., at 263, 92 S. Ct. 495, 30 L. Ed. 2d 427. In any case, it is entirely clear that a breach does not cause the guilty plea, when entered, to have been unknowing or involuntary. It is precisely because the plea was knowing and voluntary (and hence valid) that the Government is obligated to uphold its side of the bargain.

Id., p. 137-138 (emphasis in the original, footnote omitted).

In our case, the post conviction court's express reason for not allowing withdrawal of the plea was that it was validly entered. But this reasoning is exactly contrary to the United States Supreme Court's explanation that because the plea is valid the defendant is entitled to a remedy for the state's breach, which can include withdrawal of the plea or specific performance.

Given the post conviction court's misunderstanding of the law where it believed that the validity of the plea excluded withdrawal of the plea as a remedy, it could not have properly exercised its discretion in selecting a remedy because it did not realize that withdrawal of the plea could still be an appropriate remedy. So at the very least, this matter must be remanded to the post conviction court so that it can select an appropriate remedy based on a correct understanding of the law.

However, Appellant asserts that such a remand is not actually necessary and that this Court may simply reverse the decision and order that the post conviction court allow withdrawal of the guilty plea because that is the proper remedy under these circumstances.

To begin with, even the post conviction court stated that had defense counsel objected, Mr. McAmis may have been given the opportunity to withdraw his guilty plea in order to protect his negotiated rights. But then, the post conviction court did not allow that remedy.

Next, the prosecutor had promised to recommend a sentence of five years with the first two years fixed, suspended. Instead, the prosecutor recommended a sentence of incarceration, and the criminal court imposed a sentence of 11 years with the first five years fixed. As the post conviction court noted, had the prosecutor made its promised recommendation there is a distinct possibility that Mr. McAmis would have received a more favorable sentence. But since the district court, based at least in part on the prosecutor's presentation, imposed instead of suspending a sentence that was also much, much, longer than what should have been recommended, the probation ship has obviously now sailed.

In other words, given the state's breach of the plea agreement, the die is now cast for an imposed sentence, and a resentencing will be overshadowed by the fact that the prosecutor did not really believe that a sentence of probation was proper even if he now claims as much. Nor is the slate blank in regards to the resentencing court, since it is known that the original judge did not believe

that probation was proper, and instead imposed a sentence where the fixed time was the same as what should have been the recommended total sentence.

In short, this is a case where things need to start fresh, and so Mr. McAmis should be allowed to withdraw his guilty plea.

CONCLUSION

Wherefore, for the reasons as stated above, Appellant/Petitioner respectfully requests that the district court's grant of post conviction relief be modified to allow Mr. McAmis to withdraw his guilty plea, or in the alternative, to remand this matter for the court to reconsider the appropriate remedy.

DATED this 16th day of July, 2013.



Greg S. Silvey
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of July, 2013, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by the method as indicated below:

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☐ U.S. Mail, postage prepaid
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Supreme Court



Greg S. Silvey